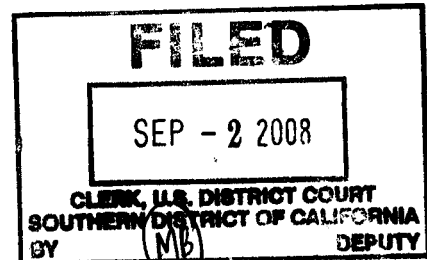


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 13 UNITED STATES OF AMERICA



14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
 17
 18 Plaintiff,
 19
 20 v.
 21 MARCELINO ARMANDO
 22 GUTIERREZ-ANDRADE,
 23
 24 Defendant.

Magistrate Case No. 08MJ2538

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

(Pre-Indictment Fast-Track Program)

25 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 26 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carla J.
 27 Bressler, Assistant United States Attorney, and defendant MARCELINO ARMANDO
 28 GUTIERREZ-ANDRADE, by and through and with the advice and consent of defense counsel,
 Joseph McMullen, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **September 17, 2008**.

6 4. The material witnesses, Juana Calvarin-Ramirez, Jorge Soto-Carballo, and Jesus
7 Herrera-Arceo, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Entered or attempted to enter the United States illegally on or about
10 August 17, 2008;

11 c. Were found with defendant instructing the material witnesses how to elude
12 inspection at the pedestrian primary lane at the San Ysidro, California Port of Entry (POE) and that
13 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right
14 to enter or remain in the United States;

15 d. Were paying \$1,800-\$2,800 to others to be brought into the United States
16 illegally and/or transported illegally to their destination therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
24 substantive evidence;

25 b. The United States may elicit hearsay testimony from arresting agents
26 regarding any statements made by the material witness(es) provided in discovery, and such testimony
27 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest

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1 of (an) unavailable witness(es); and,

2 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
3 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
4 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
5 waives the right to confront and cross-examine the material witness(es) in this case.

6 6. By signing this stipulation and joint motion, defendant certifies that defendant has
7 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
8 further that defendant has discussed the terms of this stipulation and joint motion with defense
9 counsel and fully understands its meaning and effect.

10 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
11 immediate release and remand of the above-named material witness(es) to the Department of
12 Homeland Security for return to their country of origin.

13 It is STIPULATED AND AGREED this date.

14 Respectfully submitted,

15 KAREN P. HEWITT
United States Attorney

16
17 Dated: 9/2/2008

Carla J. Bressler
18 CARLA J. BRESSLER
Assistant United States Attorney

19
20 Dated: 9/2/08

Joseph McMullen
21 JOSEPH McMULLEN
Defense Counsel for Gutierrez-Andrade

22 Dated: 9/2/08

Marcelino Gutierrez
23 MARCELINO ARMANDO GUTIERREZ-ANDRADE
Defendant

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ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 9/2/08


United States Magistrate Judge